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COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION



0000068486

22

DATE: NOVEMBER 29, 2007

DOCKET NO: T-20487A-06-0714

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah N. Harpring. The recommendation has been filed in the form of an Opinion and Order on:

TRIPLET MOUNTAIN COMMUNICATIONS, INC.
(CC&N RESELLER/FACILITIES BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 10, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 18 and DECEMBER 19, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

A handwritten signature in black ink, appearing to read "Brian C. McNeil".

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF
9 TRIPLET MOUNTAIN COMMUNICATIONS,
10 INC. FOR APPROVAL FOR A CERTIFICATE
11 OF CONVENIENCE AND NECESSITY TO
12 PROVIDE RESOLD LONG DISTANCE AND
13 FACILITIES-BASED LOCAL EXCHANGE
14 TELECOMMUNICATIONS SERVICES IN
15 ARIZONA.

DOCKET NO. T-20487A-06-0714

DECISION NO. _____

16 **OPINION AND ORDER**

17 DATE OF HEARING: November 2, 2007

18 PLACE OF HEARING: Phoenix, Arizona

19 ADMINISTRATIVE LAW JUDGE: Sarah N. Harpring

20 APPEARANCES: Mr. Glenn M. Feldman, MARISCAL, WEEKS,
21 McINTYRE & FRIEDLANDER, P.A. on behalf of
22 Triplet Mountain Communications, Inc.; and

23 Ms. Robin Mitchell, Staff Attorney, Legal Division, on
24 behalf of the Utilities Division of the Arizona
25 Corporation Commission.

26 **BY THE COMMISSION:**

27 On November 8, 2006, Triplet Mountain Communications, Inc. ("Triplet") submitted to the
28 Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience
and Necessity ("CC&N") to provide resold long distance and facilities-based local exchange
telecommunications services in the State of Arizona. Triplet also petitioned the Commission to have
its services classified as competitive.

On February 28, 2007, the Commission's Utilities Division Staff ("Staff") filed a Letter of
Insufficiency stating that Triplet's application had not met the sufficiency requirements of the
Arizona Administrative Code ("A.A.C.").

On March 30, 2007, Triplet filed its response to Staff's First Set of Data Requests.

1 On July 24, 2007, Staff filed its Staff Report recommending approval of Triplet's application
2 and recommending that its proposed services be classified as competitive.

3 On September 7, 2007, a Procedural Order was issued scheduling a hearing for November 2,
4 2007, and establishing procedural deadlines.

5 On October 12, 2007, Triplet filed an Affidavit of Publication showing that notice of Triplet's
6 application and the hearing date and time had been published in the *Arizona Republic* on September
7 28, 2007.

8 On October 29, 2007, Triplet filed supplemental pages to its proposed tariff that included
9 provisions related to toll services.

10 Also on October 29, 2007, Triplet filed a letter correcting misinformation that appeared in its
11 application and in the Staff Report. Triplet stated that it is a foreign corporation incorporated on May
12 18, 2004, and authorized to transact business in Arizona as a foreign corporation on May 3, 2005.
13 Triplet explained that both Triplet's application and the Staff Report had included an incorrect
14 incorporation date and corporate status.

15 On October 30, 2007, Triplet filed a letter explaining how it had arrived at its proposed
16 maximum rates for toll services and including pages from the tariffs of several existing carriers,
17 including Qwest LD Corporation.

18 On November 2, 2007, a full public hearing was held before a duly authorized Administrative
19 Law Judge of the Commission at its offices in Phoenix, Arizona. Triplet and Staff appeared through
20 counsel at the hearing and presented evidence and testimony. During the hearing, Triplet was
21 requested to file as a late-filed exhibit, within 10 days after the date of the hearing, a certificate of
22 good standing for Triplet, issued by the San Carlos Apache Tribe.

23 On November 19, 2007, Triplet filed a certificate of good standing, issued by the San Carlos
24 Apache Tribe, for San Carlos Apache Telecommunication Utility Incorporated, Triplet's parent
25 corporation.

26 On November 20, 2007, by Procedural Order, Triplet was ordered to file, by December 3,
27 2007, a certificate of good standing for Triplet, issued by the San Carlos Apache Tribe.

28 On November 21, 2007, Triplet filed a certificate of good standing for Triplet, issued by the

1 San Carlos Apache Tribe.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. On November 8, 2006, Triplet submitted to the Commission an application for a
7 CC&N to provide facilities-based local exchange and resold long distance telecommunications
8 services in the State of Arizona. Triplet also petitioned the Commission to have its services classified
9 as competitive.

10 2. On October 29, 2007, Triplet filed supplemental pages to its proposed tariff that
11 included provisions related to toll services.

12 3. Also on October 29, 2007, Triplet filed a letter correcting misinformation that
13 appeared in its application and in the Staff Report. Triplet stated that it is a foreign corporation
14 incorporated on May 18, 2004, and authorized to transact business in Arizona as a foreign
15 corporation on May 3, 2005. Triplet explained that both Triplet's application and the Staff Report
16 had included an incorrect incorporation date and corporate status.

17 **Triplet's Fitness and Properness to Obtain a CC&N**

18 4. Triplet is a tribal corporation incorporated under the laws of the San Carlos Apache
19 Tribe in May 2004 and is in good standing under those laws.

20 5. Triplet was authorized to transact business in Arizona as a foreign corporation in May
21 2005 and is in good standing with the Commission's Corporations Division.

22 6. Triplet is wholly owned by San Carlos Apache Telecommunication Utility
23 Incorporated ("SCATUI"), a tribal corporation incorporated under the laws of and wholly owned by
24 the San Carlos Apache Tribe.

25 7. Mr. Vernon R. James, General Manager for Triplet, testified at hearing that Triplet
26 will submit to the Commission's jurisdiction and authority in all matters related to Triplet's provision
27 of intrastate telecommunications services in Arizona. (Tr. at 13, lines 23-25; Tr. at 14, lines 1-3.)

28 8. Mr. James testified that Triplet does not intend to provide telecommunications

1 services on the San Carlos Apache Indian Reservation, except under contract with SCATUI, and
2 acknowledged that Triplet would still be subject to the Commission's jurisdiction as to any contract
3 services provided on the Reservation. (Tr. at 15, lines 14-25.)

4 9. Triplet does not currently provide telecommunications services in any state, including
5 Arizona.

6 10. According to Triplet, Triplet has not had an application for service denied or revoked
7 in any state; there have not been any civil or criminal proceedings against Triplet; none of Triplet's
8 officers or directors have been involved in any civil or criminal investigations or formal or informal
9 complaints; and none of Triplet's officers or directors have been convicted of any criminal acts in the
10 past 10 years.

11 11. According to Staff, the Consumer Services Section of the Commission's Utilities
12 Division has reported that Triplet has no complaint history within Arizona.

13 12. Ms. Pamela J. Genung, Public Utilities Analyst V for the Commission's Utilities
14 Division, testified that she believes Triplet is a fit and proper entity to receive a CC&N in Arizona.
15 (Tr. at 26, lines 17-20.)

16 **Triplet's Technical Capabilities**

17 13. Mr. James testified that SCATUI is an incumbent local exchange carrier ("ILEC") and
18 provides facilities-based voice and data telecommunications services and cable video services on the
19 San Carlos Apache Reservation. (Tr. at 14, lines 16-25; Tr. at 15, lines 1-13.)

20 14. Mr. James testified that he is currently Triplet's only employee, (Tr. at 11, line 25; Tr.
21 at 12, lines 1-2), and that he has served as Triplet's General Manager for three and one-half years (Tr.
22 at 6, lines 16-21). According to Triplet, Mr. James has 12 years of telecommunications industry
23 experience, focusing on rural telecommunications, and has served as General Manager for SCATUI.

24 15. Mr. James testified that Triplet will initially use the services of three individuals
25 employed by SCATUI, who "change hats" to serve as Triplet employees. (Tr. at 12, lines 5-7; Tr. at
26 17, lines 5-21.) This includes a Network Engineer with more than 35 years of telecommunications
27 industry experience, a Network Manager with more than 20 years of telecommunications industry
28 experience, and a Customer Service Manager with 10 years of telecommunications industry

1 experience.

2 16. Staff has determined that Triplet possesses the technical capabilities to provide the
3 telecommunications services for which it has requested authorization.

4 **Triplet's Financial Resources**

5 17. Triplet's initial funding was obtained through a tribal loan from the San Carlos
6 Apache Tribe. (Tr. at 19, lines 2-6.)

7 18. Triplet has stated that it will not rely on the financial resources of SCATUI.

8 19. Mr. James testified that if Triplet were to encounter financial problems in the future,
9 Triplet would probably obtain another tribal loan rather than obtaining financial support from
10 SCATUI. (Tr. at 19, lines 12-15.)

11 20. According to Staff, Triplet's unaudited financial statements from November 2006
12 showed assets in excess of \$2.4 million, total equity of \$11,990, and a net loss of \$196,010.

13 **Performance Bond or Irrevocable Sight Draft Letter of Credit (ISDLOC)**

14 21. Triplet's tariff states that Triplet may require an end user with a proven history of late
15 payments or without established credit to make a deposit or other payment as a guarantee of the
16 payment of rates and charges. (Application, Attachment B, Section 2.4.1.)

17 22. Because Triplet is requesting a CC&N to provide facilities-based local exchange and
18 resold long distance telecommunications services and will probably collect deposits or other advance
19 payments, Staff believes that a performance bond or irrevocable sight draft letter of credit
20 ("ISDLOC") is appropriate.

21 23. Staff recommends that Triplet be required to:

22 a. Obtain a performance bond or ISDLOC in the amount of \$110,000, which
23 reflects \$100,000 for facilities-based local exchange and \$10,000 for resold long distance;

24 b. Increase the amount of the performance bond or ISDLOC, in increments of
25 \$55,000, whenever the accumulated advances, deposits, or prepayments held by Triplet reach a total
26 that is within \$11,000 of the total value of the performance bond or ISDLOC;

27 c. No later than 30 days after the effective date of a Decision in this matter, file
28 the original performance bond or ISDLOC with the Commission's Business Office and copies of the

1 performance bond or ISDLOC with Docket Control, as a compliance item in this docket; and

2 d. Maintain the performance bond or ISDLOC in effect until further order of the
3 Commission.

4 24. Staff further recommends that, if Triplet ceases to collect advances, deposits, and
5 prepayments in the future, Triplet "be allowed to file a request for cancellation of its established
6 performance bond or [ISDLOC] regarding its resold and facilities-based services." (Staff Report at 9,
7 item (2)(c).) Staff further recommends that a request for cancellation be required to include a
8 reference to this Decision and an explanation of Triplet's plans for canceling "those portions of the
9 bond or draft." (*Id.*)

10 25. To protect consumers from the loss of facilities-based service due to service provider
11 default, which can result in consumers' completely losing telecommunications services and/or
12 incurring costs associated with physical equipment changes, the Commission requires all facilities-
13 based service providers to obtain a performance bond or ISDLOC of \$100,000 for each type of
14 facilities-based service offered. The requirement for facilities-based service providers to obtain a
15 performance bond or ISDLOC is unrelated to whether the service provider collects advances,
16 deposits, or prepayments, because it is designed to protect the consumer from a loss of
17 telecommunications service rather than a loss of funds held by the service provider as a deposit,
18 advance, or prepayment. Allowing Triplet the opportunity to request cancellation of its established
19 performance bond or ISDLOC as to facilities-based service if in the future it ceases to collect
20 advances, deposits, and prepayments would be inconsistent with the Commission's policy and the
21 rationale behind it.

22 26. Staff recommends that Triplet's performance bond or ISDLOC be forfeited if Triplet
23 fails to provide timely notice under A.A.C. R14-2-1107 prior to applying to discontinue service.

24 **Triplet's Proposed Rates**

25 27. According to Staff, Triplet will initially be providing service in areas where an ILEC
26 and various competitive local exchange carriers ("CLECs") and interexchange carriers are already
27 providing service. Thus, Triplet will have to compete with those providers to obtain subscribers to its
28 services and will generally not be able to exert market power. Staff believes that the competitive

1 process should result in rates that are just and reasonable.

2 28. According to Staff, information submitted by Triplet indicates that Triplet's fair value
3 rate base is \$2,375,000. While Staff considered the fair value rate base information submitted by
4 Triplet, it did not accord that information substantial weight in its analysis of Triplet's proposed rates,
5 because rates for competitive services are generally not set according to rate-of-return regulation.

6 29. Staff has reviewed Triplet's proposed rates and believes that they are comparable to
7 those charged by other CLECs, ILECs, and major long distance carriers offering service in Arizona.

8 30. Mr. James testified that he believed the rates proposed by Triplet to be at least equal to
9 Triplet's estimated total service long-run incremental costs. (Tr. at 19, line 25; Tr. at 20, lines 1-6.)

10 **Local Exchange Services**

11 31. A.A.C. R14-2-1308(A) requires a local exchange carrier to make local number
12 portability available to facilitate the ability of a customer to switch between authorized local carriers
13 within a given wire center without changing the customer's telephone number and without
14 impairment of quality, functionality, reliability, or convenience of use.

15 32. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
16 interconnect to the public switched network to provide funding for the Arizona Universal Service
17 Fund ("AUSF"). A.A.C. R14-2-1204(B)(3)(a) requires new telecommunications service providers
18 that begin providing basic local exchange service after April 26, 1996, to pay AUSF charges as
19 provided under A.A.C. R14-2-1204(B)(1).

20 33. Staff recommends that Triplet be ordered to abide by the quality-of-service standards,
21 other than penalties, approved for Qwest by the Commission in Decision No. 59421. Because Triplet
22 will have no market power in the competitive market that it desires to enter, Staff believes that Triplet
23 will be forced to provide a satisfactory level of service or risk losing its customers and that it is thus
24 unnecessary to subject Triplet to the penalties in Decision No. 59421 at this time.

25 34. Staff recommends that Triplet be prohibited from barring access to alternative local
26 exchange service providers who wish to serve in areas where Triplet has installed the only local
27 exchange service facilities. Staff states that access to other providers should be provided pursuant to
28 the 1996 Telecommunications Act, the rules promulgated thereunder, and the Commission's rules on

1 interconnection and unbundling.

2 35. According to Staff, Triplet has certified that, in accordance with A.A.C. R14-2-
3 1201(6)(d) and 47 CFR 64.3001 and 64.3002, Triplet will provide all customers with 911 and E911
4 service, where available, or will coordinate with ILECs and emergency service providers to provide
5 911 and E911 service.

6 36. Past Commission decisions have established that local exchange carriers may offer
7 Caller ID provided that per call and line blocking, with the capability to toggle between blocking and
8 unblocking the transmission of the telephone number, are provided as options to which customers
9 may subscribe at no charge. Staff recommends that Triplet be required to offer Caller ID with this
10 capability.

11 37. Past Commission decisions have established that local exchange carriers are required
12 to offer Last Call Return service that will not return a call to a telephone number that has a privacy
13 indicator activated. Staff recommends that Triplet be required to offer this service.

14 **Long Distance Services**

15 38. A.A.C. R14-2-1204(A) requires all telecommunications service providers that
16 interconnect to the public switched network to provide funding for the AUSF. A.A.C. R14-2-
17 1204(B)(3)(a) requires new telecommunications service providers that begin providing toll service
18 after April 26, 1996, to pay AUSF charges as provided under A.A.C. R14-2-1204(B)(2).

19 **Competitive Services**

20 39. Staff states that ILECs hold a virtual monopoly in the local exchange market and that a
21 number of new CLECs have also been authorized to provide local exchange services. Triplet will
22 have to compete with ILECs in those areas where ILECs provide local exchange services and may
23 have to convince developers to allow it to provide service to their developments in those areas where
24 ILECs do not provide local exchange services.

25 40. Staff states that numerous facilities-based and resold interexchange carriers are
26 providing both interLATA and intraLATA interexchange services throughout the state and that
27 ILECs are also providing intraLATA interexchange services in many areas of the state. Triplet will
28 be a new entrant to the interexchange market and will have to compete with those carriers to obtain

1 customers.

2 41. Staff recommends that Triplet's proposed services be classified as competitive
3 because there are alternatives to Triplet's services, Triplet will have to convince customers to
4 purchase its services, and Triplet has no market power.

5 **Staff's Recommendation for Approval/Denial**

6 42. Ms. Genung testified that approval of Triplet's application for a CC&N would be in
7 the public interest. (Tr. at 26, lines 21-24.)

8 43. Staff recommends that Triplet's application for a CC&N to provide facilities-based
9 local exchange services and resold long distance services be approved.

10 **Additional Staff Recommendations**

11 44. Staff further recommends that Triplet be required to:

12 a. Comply with all Commission rules, orders, and other requirements relevant to
13 the provision of intrastate telecommunications services;

14 b. Notify the Commission immediately upon changes to Triplet's name, address,
15 or telephone number;

16 c. Cooperate with Commission investigations, including but not limited to
17 customer complaint investigations; and

18 d. Docket a conforming tariff for each service authorized by its CC&N within
19 365 days after the date of a Decision in this matter or 30 days before providing service, whichever
20 comes first, which tariff shall state that Triplet may collect advances, deposits, and/or prepayments
21 from its customers.

22 45. Staff further recommends that Triplet's CC&N become null and void, after due
23 process, if Triplet fails to:

24 a. Docket a conforming tariff for each service authorized by its CC&N as
25 recommended in Finding of Fact No. 44(d),

26 b. Make monthly payments to the AUSF as required by A.A.C. R14-2-1204(B),
27 or

28 c. Comply with the recommended requirements for a performance bond or

1 ISDLOC described in Finding of Fact No. 23.

2 46. Staff further recommends that the Commission authorize Triplet to discount its rates
3 and service charges to the marginal cost of providing the services.

4 **CONCLUSIONS OF LAW**

5 1. If its application is granted, Triplet will be a public service corporation within the
6 meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

7 2. The Commission has jurisdiction over Triplet and the subject matter of the application.

8 3. Notice of Triplet's application was given in accordance with the law.

9 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
10 CC&N to provide competitive telecommunications services.

11 5. Pursuant to Article XV of the Arizona Constitution and the Arizona Revised Statutes,
12 it is in the public interest for Triplet to provide the telecommunications services for which it has
13 requested authorization in its application.

14 6. Triplet is a fit and proper entity to receive a CC&N authorizing it to provide facilities-
15 based local exchange services and resold long distance services.

16 7. The telecommunications services that Triplet desires to provide are competitive in
17 Arizona.

18 8. Pursuant to Article XV of the Arizona Constitution and 14 A.A.C. 2, Article 11, it is
19 just and reasonable and in the public interest for Triplet to establish rates and charges for competitive
20 services that are not less than Triplet's total service long-run incremental costs of providing the
21 competitive services approved herein.

22 9. Staff's recommendations, as set forth in Findings of Fact Nos. 23, 26, 33, 34, 36, 37,
23 41, and 43-46 are reasonable and should be adopted.

24 10. Staff's recommendation in Finding of Fact No. 24 is not reasonable and, for the
25 reasons described in Finding of Fact No. 25, should not be adopted. Instead, if Triplet ceases to
26 collect advances, deposits, and prepayments in the future, Triplet should be allowed to file a request
27 for cancellation of only that portion of its established performance bond or ISDLOC related to its
28

1 resold long distance services. In addition, as recommended by Staff, Triplet should be required to
2 include in its request for cancellation a reference to this Decision and an explanation of its plan for
3 canceling that portion of its performance bond or ISDLOC.

4 11. Triplet's rates, as they appear in its proposed tariff, are just and reasonable and should
5 be approved.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of Triplet Mountain Communications,
8 Inc. for a Certificate of Convenience and Necessity to provide facilities-based local exchange
9 services and resold long distance services in Arizona is hereby granted, conditioned upon compliance
10 with Staff's recommendations set forth in Findings of Fact Nos. 23, 26, 33, 34, 36, 37, 41, and 43-46
11 and the recommendations in Conclusion of Law No. 10.

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IT IS FURTHER ORDERED that if Triplet Mountain Communications, Inc. fails to meet the conditions outlined in Finding of Fact No. 45, the Certificate of Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, DEAN S. MILLER, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

DEAN S. MILLER
INTERIM EXECUTIVE DIRECTOR

DISSENT

DISSENT

SNH:db

1 SERVICE LIST FOR: TRIPLET MOUNTAIN COMMUNICATIONS, INC.

2 DOCKET NO.: T-20487A-06-0714

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